

**Zoning Board of Adjustment Public Hearing
Richmond Veterans Hall**

October 13, 2021

7:00 PM

Members Present

Alan Schmidt, Chairman
Mark Beauregard, Vice Chairman
Lloyd Condon
Antoinette Cincotta
Robert Gow, Alternate

Members Absent

Thomas Tague

Public: Dorene McCobb, Peter Guertin, Elaine Guertin, Deveda Brokenshire, Fran Heap.

1. Meeting called to order/roll call:

Meeting called to order at 7:06 PM.
Robert Gow seated for Tom Tague.

Public Hearing called to order at 7:07 PM.

2. Map 405 Lot 16 (Variance Wetland setback):

Vice Chairman Beauregard wanted to express that he was against the recoding being done by a member of the board.

Chairman Schmidt read the rules of procedure for a public hearing. After, Chairman Schmidt asked if there was any discussion from the board or the public. No discussion.

Abutters notified by Certified Mailing with no return receipt on September 30, 2021.

Notification ran in the Keene Sentinel legal section on September 30, 2021, and rerun adding the time of the meeting on September 31, 2021.

Meeting was publicly posted inside and outside of the Town Hall and outside the Veterans Hall. September 30, 2021.

The proposed application is for a Variance from Article 6: Wetland Conservation District under 604.2 (erection of a structure) more specially 602. Map 405 Lot 16 consisting of 0.07 acres is owned by Dorene McCobb residing at 62 Logan Ave. Orange, MA. Map 405 Lot 16 is located at 160 Sandy Pond Road, Richmond, NH. The proposed variance is being requested for a garage set outside its original footprint and further into the shoreline of Sandy Pond.

Richmond Zoning Compliance Officer visited the site on March 6, 2021 and measured the setback from the shoreline was 39" from the reference line (high water mark) of Sandy Pond. There was not a Variance from the Richmond Board of Adjustment for moving the building 2 feet further onto the Shoreline. There was no permit of notification on file per RSA 483-B:5-b(a), recommendation by ZCO was a cease-and-desist order until issues were addressed.

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NH Department of Environmental Services determined on June 19, 2021 (file #2021-01509) that based upon the administrative review, NHDES had determined that no further action is required through NHDES.

Richmond Conservation Commission reviewed the file on October 7, 2021, and submitted their recommendations to the Zoning Board of Adjustment.

Chairman Schmidt asked the applicant to please present their case to the board.

Elaine Guertin (power of attorney) introduced herself, her mother Dorene McCobb and her husband Peter Guertin.

Dorene McCobb gave her personal consent for her son in-law Peter Guertin to speak and represent her during the hearing.

Guertin started off by giving some background history on McCobb's camp and the new garage erection.

Guertin presented his case according to the Application for a Use Variance for the Town of Richmond. Snowplows and damage to the building from the roadway were the reason for the garage to be set back 2 feet. Guertin received quotes to rebuild the roof, front and 2 feet into the structure. He went with a new building following a contractor's suggestion. Guertin asked that the new building be 2' smaller set back from the road. He chose a contractor from Richmond with the thought that he would know what the regulations were. The contractor applied for the razing and rebuilding of the building. The garage was built larger than he applied for.

Chairman Schmidt asked why the Selectmen didn't have Guertin apply for an Equitable Waiver of Dimension? Guertin had no idea why. Guertin went on reading his submission according to the Zoning Variance application.

Variance for Article 6 section 602

1106.1-Granting the Variance would not be contrary to the public interest:

Moving the location of the new garage style building approximately two feet further away from the centerline of Sandy Pond Road should be greatly beneficial to normal road traffic and Richmond's ability to maintain the road especially during the snowplowing season.

1106.2-The use in not contrary to the spirit of the ordinance because:

The new building with clean new building materials is a major improvement from the old rotten building containing unknown substances. It will have a far less change of any pollution factors. It is built above road grade, so the road water no longer flows through the building.

1106.3- Granting the variance would do substantial justice because:

The new building is an asset to Richmond due to the much-improved visual appearance. The structure's new location will have substantial less negative impact on the environment in the new, further from the road location.

1106.4- The proposed use would not diminish surrounding property values because:

The new garage is cleaner and better looking.

1106.5- Denial of the variance would result in unnecessary hardship to the owner because:

A poor situation of a collapsing, dangerous building is now improved with a much-needed storage building.

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1106.5.1.1- That no fair and substantial relationship exists between the general purposes of the Zoning ordinance and the specific restriction on the property because:

I understand that the ordinance is to safely ensure that the nearby pond will not be polluted. The location and size of the replacement structure will not interfere with the pond water. It will only reduce the chance of pollution.

1106.5.1.2- The proposed use is a reasonable one.

The proposed use of the building n mainly for storage of wood and maintenance equipment and tools. It is currently not expected to be used for storage of fuel other that burnable wood. If fuel such as gas was temporarily stored in the building, I would not expect more than need to supply a string weed trimmer. I cut the lawn with an electric string weed trimer. (Commonly referred to as a Weed Wacker)

1106.5.1.3- the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

Due to the extremely small lot size, the current zoning restrictions cannot be physically met as written.

Gurtin went on to read the variance under 603 for Uses Permitted. Basically, the same information as 602 (see record).

All the holes were dug by hand for the cement piers to replace the wooden foundation. The cement was mixed and poured by hand. Building was put at a different slant, Guertin couldn't follow up on the contractor's measurements and the roots from the tress interfered.

Chairman Schmidt asked if anyone from the public wanted to speak for the applicant.

Daveda Brokenshire spoke in favor stating that she owns on 3 sides of the cabin they have no problem with the new construction, and she'd like to see them get it. There is also a positive letter from Brokenshire in the record.

Chairman Schmidt asked if anyone wanted to speak against the applicant. No response.

Chairman Schmidt asked if any of the board members had and questions.

Cincotta had a question in referencing the Richmond Zoning Compliance Officers (CZO) report. Discussion on the size of the building on the permit and the size of the garage was larger. Zoning Compliance measured at the largest point of the building. Not to the footing. Guertin referenced a definition he found online stating it should be measured from the outside of the foundation the ZCO measured the building from the outside wall to outside wall including the lattice.

Chairman Schmidt then read the report from the Richmond Conservation Commission recommendations from Oct.7,2021.

1. Fill the gap between the rebuilt garage and Sandy Pond Road with a base of 6" minus crushed ledge with supporting edges recommending a 2:1 slope within 6" of finished grade. The remainder of the gap is to be filled with ¾ "crushed stone to the grade of Sandy Pond Rd.

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Chairman Schmidt asked if any of the board has seen the new garage. Four members have seen the site and one had not.

Suggested to continue the meeting to a site walk? No real discussion.

Discussion on the sand being washed away from the front and underneath the garage creating the gap. It was the intention of the Conservation Commission to use the stone to filter the water slowly through stone footing with hopes not to create erosion to the shoreline. Stone would also be heavy enough not to be moved. Drainpipe would concentrate the water and become a stream to create a possible future wash out. Guertin would remove all the sand.

The equitable waiver of dimension was not suggested in this situation. The building was moved 2 feet further into the wetlands and it was shoreline of Sandy Pond not just wetlands.

Condon clarified the measurements on a foundation vs. a pier. The accessor will measure outside to outside of the building. He referenced the foundation in the Richmond Ordinances. The applicant's thoughts on the measuring was incorrect they do not measure from pier to pier they measure from outside of the building.

The boards consensus was that a site walk doesn't need to be done. Cincotta offered to abstain since she had not seen the site.

With no further discussion from the public or the board the public hearing was closed at 7:45 PM.

The board went through the criteria for a Variance. Chairman Schmidt asked if a member of the board had any discussion to please let him know and discussion would happen.

1106.1-Granting the Variance would not be contrary to the public interest:

No negative response.

1106.2-The use in not contrary to the spirit of the ordinance because:

Schmidt added that this was built pre-zoning.

No negative response.

1106.3- Granting the variance would do substantial justice because:

No negative response.

1106.4- The proposed use would not diminish surrounding property values because:

The abutter owning the property on three sides is in favor.

Board agreed there were none.

1106.5- Denial of the variance would result in unnecessary hardship to the owner because:

Lot size did not allow for many choices.

No negative response.

1106.5.1.1- That no fair and substantial relationship exists between the general purposes of the Zoning ordinance and the specific restriction on the property because:

No substantial relationship noted.

1106.5.1.2- The proposed use is a reasonable one.

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Board agreed.

1106.5.1.3- The criteria in the above two subsections are not established, an unnecessary hardship will be deemed to exist if, and only if owning to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is there for necessary to enable reasonable use of it.

Board agreed.

Chairman Schmidt entertained a motion:

Motion made by Condon to Grant the variance with the Conservation Commission recommendations. With the Zoning Compliance Officer to follow up after the completion of work and report to the Selectmen.

Seconded by Beauregard.

No discussion.

Three in favor. One abstention. Motion granted.

Motion made by Beauregard to close the public hearing. Seconded by Gow. No discussion. All in favor. None opposed Motion carries. Hearing closed at 8:00 PM.

3. Minutes of July 14, 2021:

Page 1. Fourth line from bottom. Change Cincotta to Tague. Should read Motion made by Tague. Third line from bottom change Chairman Schmidt to Cincotta. Should read Seconded by Cincotta.

Page 2. Under 1105.1.3, second line pull the word an. Should read, will not create excessive noise,

Page 3. Eight section down, second line add the word is. Should read, all she uses is all-natural sticks and wax.

Page 4. Under 3. Minutes of September 9, 2020, under page 10: Cincotta discussed why we're not correcting the minutes to read what we voted on. She sent a snip-it to the Chairman, wondering why one year after completion her correction was not included in the minutes according to her. The Notice of Decision was taken from the minutes. Chairman Schmidt said that the recording was 7 seconds long out of days of discussion with no time or date stamp. The recording was made by somebody, but Cincotta didn't know who?

When asked if any of the board recalled including one year after completion all carriers would be in place or the tower would be taken down? None of the other board members recalled that statement in the final conditions. Schmidt said that sending seven seconds of a recording from the hearing is wrong. He continued that any discussion sent via emailing outside of the scheduled meetings has got to stop. All communication should be done at the meeting. No personal emails back and forth. Cincotta said she did this so that she could get on the agenda.

The board asked for full copies of the tapes, Cincotta said she had the tapes or could get some of the tapes. Beauregard said that the Notice of decision is done and can't be changed.

Cincotta mentioned that we must have recordings to have accurate minutes and Notice of Decisions. Cincotta would like the board to comply with the law. She would only like to see things done correctly.

Motion made by Condon to accept the minutes of July 14, 2021 as amended. Seconded by Beauregard. No discussion Three in favor. One opposed. Motion carries.

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At this time the recording was shut off.

4. Board Discussion reference to letter of Attorney Hoppock 7.23.21 (closed session)

Discussion of Attorney's letter. Under 91-A and common law his opinion is subject to Attorney-client privilege and is exempt from disclosure under 91-A.

Discussion of Attorney's letter meeting closed session at 8:30 PM.

Board out of closed session at 9:20 PM.

5. Other:

Nothing under other.

Motion made by Beauregard to adjourn the meeting. Seconded by Gow. All in favor. None opposed. Motion carries. Meeting adjourned at 9:20 PM.

Respectfully Submitted,

Kandace Mattson